

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

2011 NOV -9 P 3:14

ANTHONY BERNARD JUNIPER,
Petitioner,

v.

LORETTA K. KELLY,
Warden, Sussex I State Prison
Respondent.

No. 3:11 cv 746
**CAPITAL POST-CONVICTION
PROCEEDING**
**EXECUTION IMMINENT:
SCHEDULED NOVEMBER 10, 2011**

MOTION FOR IMMEDIATE STAY OF EXECUTION

Anthony Bernard Juniper, a death-sentenced inmate in the custody of Respondent, requests pursuant to 18 U.S.C. § 3599 and *McFarland v. Scott*, 512 U.S. 849 (1994) a stay of his execution scheduled for November 10, 2011, for the purpose of preparing and litigating his first federal petition for a writ of habeas corpus.

1. Juniper is a Virginia death-sentenced prisoner in Respondent's custody. On September 28, 2011, at the behest of Warden's counsel, the Circuit Court for the City of Norfolk issued an order that the Commonwealth execute Juniper on June 16, 2011. Warden's counsel also has previously and consistently indicated that he would not oppose Juniper's request to this Court for a stay of the November 10, 2011, execution.

2. Juniper has exhausted state post-conviction remedies. His state petition for writ of habeas corpus was dismissed by the Supreme Court of Virginia on March 4, 2011. That court then denied Juniper's timely petition for rehearing on September 16, 2011.

3. On September 30, 2011, Juniper filed a petition for writ of certiorari to the

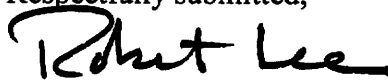
Supreme Court of Virginia. On November 2, 2011, the Warden still had not filed a responsive pleading, and Juniper submitted an application to the Supreme Court of the United States for a stay of execution pending resolution of certiorari proceedings. On November 3, 2011, Respondent filed a Brief in Opposition to certiorari review in which he also stated her opposition to a stay of execution. Juniper filed a brief Reply to the Brief in Opposition on November 7, 2011.

4. Once the Supreme Court of the United has resolved certiorari proceedings, Juniper intends to file a petition for writ of habeas corpus in federal court challenging, under the United States Constitution, the legality of his convictions and sentences. *See* 28 U.S.C. § 2254(d). Juniper has not previously filed a petition for federal collateral relief to challenge his convictions and death sentence.

5. This Court has jurisdiction to enter an order staying Juniper's execution.

WHEREFORE, Juniper respectfully requests that the Court grant his Motion for Immediate Stay of Execution.

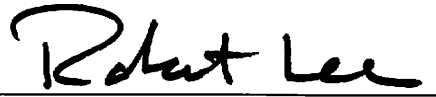
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on November __, 2011, a copy of the foregoing Motion for Immediate Stay of Execution and Motion for Appointment of Counsel and Memorandum In Support was served by hand-delivery on Steven Witmer, Senior Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23819, and switmer@oag.state.va.us.



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